



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0389; FRL-9952-41-Region 2]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; NJ; Infrastructure SIP Requirements for 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, and 2012 PM_{2.5}, 2006 PM₁₀ and 2011 Carbon Monoxide NAAQS: Interstate Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving elements of a New Jersey State Implementation Plan (SIP) submittal pertaining to the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide (NO₂), 2010 Sulfur Dioxide (SO₂), 2011 Carbon Monoxide (CO), 2006 Particulate Matter of ten microns or less (PM₁₀), and 2012 Particulate Matter of 2.5 microns or less (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements relating to interstate transport provisions concerning the Prevention of Significant Deterioration of Air Quality (PSD) regulations, and visibility protection.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2016-0389. All documents in the docket are listed on the <http://www.regulations.gov>

Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or please contact the person identified in the "For Further Information Contact" section for additional information.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, 212-637-3702, fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we", "us", and "our" means EPA.

- I. Background and Purpose
- II. What action is EPA taking?
- III. Statutory and Executive Order Reviews

I. Background and Purpose

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in New Jersey's infrastructure SIP submitted on October 17, 2014 to address applicable infrastructure requirements with respect to the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5}, 2006 PM₁₀ and 2011 CO NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute

directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address. EPA commonly refers to such state plans as "infrastructure SIPs." In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (commonly referred to as prong 1), or interfering with maintenance of the NAAQS (prong 2), in any another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (prong 3) and to protect visibility (prong 4) in another state.

This rulemaking pertains only to the portion of the SIP submittal addressing section 110(a)(2)(D)(i)(II)(prongs 3 and 4). On March 30, 2016, New Jersey withdrew the portion of the submittal addressing 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 Ozone NAAQS. EPA subsequently issued a Finding of Failure to Submit to New Jersey.¹ EPA will address the other portions of the October 17, 2014 infrastructure SIP submittal in a separate action.

EPA proposed action on the October 17, 2014 submittal on July 27, 2016 (81 FR 49205). In that action, EPA proposed to disapprove the portions of New Jersey's October 17, 2014 SIP submission addressing prong 3 and proposed to approve the portions addressing prong 4 regarding CAA section 110(a)(2)(D)(i) requirements. No comments were received on the proposal. The reader is referred to the July 27, 2016 proposed rulemaking for a detailed discussion of New Jersey's submittal and EPA's review and proposed actions.

¹ 81 FR 38963 (June 15, 2016).

II. What action is EPA taking?

EPA is approving the portion of the October 17, 2014 SIP submittal from New Jersey pertaining to the requirements of CAA section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4) for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5}, 2006 PM₁₀ and 2011 CO NAAQS.

New Jersey has elected to comply with the Federal PSD requirements by accepting delegation of the Federal rules and has been successfully implementing this program for many years. However, EPA does not recognize a delegated PSD program as satisfying the Infrastructure SIP requirements. Therefore, EPA is disapproving New Jersey's submittal pertaining to the requirements of CAA section 110(a)(2)(D)(i)(II) requirement for PSD (or prong 3) for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5}, 2006 PM₁₀ and 2011 CO NAAQS. However, the disapprovals will not trigger any sanctions or additional Federal Implementation Plan obligation since a PSD Federal Implementation Plan is already in place.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This final action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This final action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves and disapproves certain state requirements for inclusion into the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely partially approves and partially disapproves a SIP submittal from the State of New Jersey.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. This action merely partially approves and partially disapproves a SIP submittal from the State of New Jersey.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: September 6, 2016.

Judith A. Enck,
Regional Administrator,
Region 2.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart FF – New Jersey

2. Section 52.1586 is amended by adding paragraph (b) and adding and reserving paragraph (c) to read as follows:

§52.1586 Section 110(a)(2) infrastructure requirements.

* * * * *

(b) *2008 Lead, 2008 8-hour ozone, 2010 NO₂, 2010 SO₂, 2012 PM_{2.5}, 2006 PM₁₀ and 2011 CO NAAQS--(1) Approval.* Submittal from New Jersey dated October 17, 2014 to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 NO₂, 2010 SO₂, 2012 PM_{2.5}, 2006 PM₁₀ and 2011 CO NAAQS is approved for (D)(i)(II) prong 4 (visibility).

(2) *Disapproval.* Submittal from New Jersey dated October 17, 2014 to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 NO₂, 2010 SO₂, 2012 PM_{2.5}, 2006 PM₁₀ and 2011 CO NAAQS is disapproved for (D)(i)(II) prong 3 (PSD program only). These requirements are being addressed by § 52.1603 which has been delegated to New Jersey to implement.

(c) [Reserved]